Supreme Court, U. S.
FILED
APR 4 1979
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term 1979

No. 78-1514

OFELIA CHIROLDE,

Petitioner,

vs.

CALIFORNIA,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEAL OF THE STATE OF CALIFORNIA SECOND APPELLATE DISTRICT DIVISION

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No. _____

OFELIA CHIROLDE,

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TO: THE HONORABLE WARREN E. BURGER, CHIEF JUSTICE OF THE UNITED STATES, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE UNITED STATES SUPREME COURT:

COMES NOW, OFELIA CHIROLDE, by her attorney, BRUCE P. WOLFE, ESQ., a member of the Bar of the United States Supreme Court, and petitions this Honorable Court for a Writ of Certiorari directed to the Court of Appeal of the State of California Second Appellate District, Division 2, to review that certain unpublished decision, People of the State of California vs. OFELIA CHIROLDE, November 13, 1978, affirming her conviction of two California felonies, namely arson and conspiracy to commit arson.

Pursuant to Rule 23, Rules of the Supreme Court of the United States, Petitioner submits the following:

OPINION BELOW

The opinion of the California Court of Appeal in this case was rendered November 13, 1978, and was certified as Not For Publication. A copy of this Opinion is appended as Appendix "A".

JURISDICTION

The grounds upon which the jurisdiction of this Honorable Court is invoked are:

(i) the date that the judgment which is sought to be reviewed was entered is November 13, 1978;

(ii) the Supreme Court of California denied a Petition for Hearing on February 1, 1979;

(iii) the statutory provision conferring jurisdiction on this Honorable Court is 28 U.S.C. 1257(3) which provides:

> "Final judgments or decrees rendered by the highest Court of a State in which a decision could be had, may be reviewed by the Supreme Court as follows:

". . . By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties of laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929."

Jurisdiction of this Honorable Court is further invoked because the California Court of Appeal, Second Appellate District Division 2, has decided a federal question in a way not in accord with applicable decisions of this Honorable Court, Gregory v. United States, 369 F.2d 185; Macklin v. United States, 409 F.2d 174; United States v. Telfaire, 469 F.2d 552; see also the following Court decisions embracing Gregory, Macklin, and Telfaire; People v. Guzman, 47 Cal. App. 3d 380, People v. Tewksbury, 15 Cal. 3d 953, and the cases cited therein.

Further, the State Courts of California have decided a Federal question of substance not heretofore determined by this Honorable Court, namely whether the intentional omission of a requested accomplice instruction from a trial jury denies a State criminal defendant due process of law under the 14th Amendment to the

United States Constitution, within the meaning and reasoning of People v. Gordon, 10 Cal. 3d 460; People v. Guzman, supra; People v. Romo, 14 Cal. 3d 189; People v. Sedeno, 10 Cal. 3d 703; People v. St. Martin, 1 Cal. 3d 524.

QUESTIONS PRESENTED FOR REVIEW

1. Whether a state criminal defendant is denied Due Process of Law under the 14th Amendment for a State Court of California to fail to instruct a trial jury on a relevant principle of law raised by the evidence and facts before that Court and in so doing come within the broad application of the reasoning of the Court in Gregory v. United States, 369 F.2d 185; Macklin v. United States, 409 F.2d 174; United States v. Telfaire, 469 F.2d 552; and see also People v. Cisneros, 34 Cal. App. 3d 460; People v. Brocklehurst, 14 Cal. App. 3d 473; People v. Williams, 10 Cal. App. 3d 638, and within the meaning of all ofthe authorities cited in each of the foregoing opinions?

UNITED STATES CONSTITUTIONAL AMENDMENTS INVOLVED

Fourteenth Amendment -

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of

the United States wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE WITH FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED

1. Petitioner CHIROLDE was charged with arson and conspiracy to commit arson involving the burning of her own Los Angeles dwelling in February of 1977.

2. The prosecution presented its case against Petitioner based primarily on the testimony of JUDY EUBANKS and SHAWN BISHOP.

3. Both witnesses, JUDY EUBANKS and SHAWN BISHOP, were granted immunity from prosecution.

4. Witness, GARY COOPER, testified that he investigated the arson of the dwelling and found evidence of quantities of flammable liquids indicating the fire was of incendiary origin.

5. NASRI GHAULAM testified that he was the employer of PASCAL SARKISSIAN who was alleged to have actually burned Petitioner's home and this witness observed quantities of kerosene belonging to MR. SARKISSIAN at his place of business.

6. Sparce direct evidence was adduced that linked Petitioner to this crime other than the testimony of witness, EUBANKS and BISHOP.

7. In fact, very little creditable direct evidence linked the Petitioner to the crime charged, and thus it cannot scarcely be argued and successfully contended that the errors set forth in no way contributed to the conviction.

Fahy v. Connecticut,
375 U.S. 85;
Chapman v. California,
386 U.S. 18.

REASONS FOR GRANTING WRIT OF CERTIORARI

1. Whether a state criminal defendant is denied due process of law by a state court's failure to instruct a trial jury on a relevant principle of law raised by the evidence and facts before that Court, within the broad meaning of due process of law encompassing the decisions of the Court.

Gregory v. U.S.,
369 Fed. 2d 185;
Macklin v. U.S.,
409 Fed. 2d 174;
United States v. Telfaire,
469 Fed. 2d 552.

ARGUMENT

THE TRIAL COURT ERRED IN NOT INSTRUCTING THE JURY THAT WITNESSES, JUDY EUBANKS AND SHAWN BISHOP, WERE ACCOMPLICES AS A MATTER OF LAW.

1. When it became apparent from a testimony of JUDY EUBANKS that she was aware of the proposed arson prior to its commission, she became an accomplice as a matter of law.

2. Later, after having knowledge of the intended arson, she participated in the purchase of gasoline containers and kerosene.

3. Thereafter, JUDY EUBANKS, transported cans of kerosene to another location for storage.

4. JUDY EUBANKS also observed SHAWN BISHOP and DEBBIE SARKISSIAN placing gun powder into shotgun shells.

5. The acts committed by this witness, EUBANKS, demonstrated that she had knowledge of the use for which the kerosene was purchased. Possessed of this knowledge, she stored the kerosene for the persons who told her of the criminal process for which it would be used. She agreed to and did transport the kerosene to the house that was to be burned. She provided storage of the kerosene for some two to three weeks. She then provided further transportation to a storage place for the kerosene pending the arson. After knowledge of the completed burning, she provided transportation for the escapage of one of the admitted arsonists, DEBBIE SARKISSIAN, by taking her for a passport and to the airport. Because JUDY EUBANKS did these acts of transportation, storage, and delivery of an item that became instrumental of the commission of the arson, with knowledge of the criminal purpose it is reasonable to infer and conclude that she had guilty knowledge and intent.

6. The Court of Appeal in their opinion stated that on Page 5,

> "The questior of EUBANK's status as an accomplice having been properly left to the Jury, we presumed on appeal that the Jury found she was not an accomplice (citation). Her testimony, therefore, did not require corroboration, the evidence was sufficient to sustain the conviction and the motion for acquittal was properly denied."

7. Whenever evidence at a trial raises a reasonable inference that a witness implicating that a defendant is an accomplice, its the duty of the Court to instruct the Jury regarding accomplices and accomplice testimony. Failure to do so is error whether or not the implicated defendant requests the instructions.

People v. Brown,
6 Cal. App. 3d 619;
People v. Belton,
56 Cal. App. 3d 636.

8. Clearly, the denial of Petitioner's request for an accomplice instructions denied her due process within the meaning of this Honorable Court's decision.

A hearing should be accorded to Petitioner to resolve the serious issue involved in the denial of relevant jury instructions in the California State Court. The state wide consequences of such acts by California Courts make this issue most relevant.

A hearing should be granted.

CONCLUSION

Because of the foregoing issue of national significance and importance, Certiorari should be granted. The issue of whether a state criminal defendant is denied due process of law by a state court's failure to instruct a trial

jury on a relevant principle of law raised by the evidence and facts before that Court, within the broad meaning of due process of law encompassing the decisions of the Court, an issue of Federal Constitutional Due Process of Law, has never been resolved by this Honorable Court, and a Hearing should be accorded.

Respectfully submitted,

BRUCE P. WOLFE

Attorney for Petitioner

APPENDIX A

NOT FOR PUBLICATION

FILED
Nov 18 1978
Clay Robbins, Jr., Clerk

IN THE COURT OF APPEAL
OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

THE PEOPLE OF THE STATE OF CALIFORNIA,	2 CRIM. NO. 32530
Plaintiff and Respondent,	(Super. Ct. No. A332514)
v.	
OFELIA CHIROLDE,	
Defendant and Appellant.	

Defendant, Ofelia Chirolde, appeals her conviction by a jury of arson (Pen. Code § 447a) and conspiracy to commit arson (Pen. Code, § 182). We affirm the conviction.

FACTS

On 2 December 1976, defendant's home at 122 South Vendome, Los Angeles, was heavily damaged by fire. Two investigators from the City of Los Angeles Fire Department Arson Investigator Unit were called to the scene. Upon inspecting the premises the officers discovered several metal fuel containers situated throughout the house, including twelve five-gallon containers marked kerosene, two one-gallon containers marked "white gas" or "Coleman fuel," and three one-quart motor oil containers, some filled with solvent flammable liquids. All the containers were open; some were empty, some still contained flammable liquids. Some of the smaller containers had Zody's tags attached to them and at least one five-gallon container had attached to it a Chevron tag with the address of a Standard station located on the corner of Sepulveda and Century Boulevards, near the Los Angeles airport. Also found were two timing devices, one with wires connecting to resistance coils at two different locations in the house; and combustible material, such as bedding and pillow material, located throughout the house and in such unusual places as bookcases. Flammable liquids had recently been poured on floors, on a bed, and other furniture. The house smelled of gasoline and kerosene. Investigator Ronald Hamel testified that what he observed at the scene at 122 South Vendome was quite consistent with an insurance fraud fire.

Hamel also testified that from a license number taken off an invoice at the above-mentioned Chevron station, he was able to trace the purchase of the co ntainers to Pascal and Deborah Sarkissian. On December 6 Hamel questioned the Sarkissians about this purchase and how the containers and flammable liquid ended up at the Chriolde residence, but at the time he lacked sufficient information to arrest the couple.

Two days later, Hamel informed the defendant he was conducting an arson investigation, said the Sarkissians were possible suspects, and asked about her relationship with the couple. Defendant described the relationship as very friendly, quite close, and said that she had been to the Sarkissians' home on several occasions. Defendant's arrest followed an extensive statement given by the Sarkissians' friend and fellow Northrop University classmate, Shawn Bishop. The content of this statement and the manner in which Bishop and another friend of the Sarkissians, Judy Eubanks, were brought into the investigation were not disclosed at trial. Hamel attempted to arrest the Sarkissians as well, but the couple had fled the country. Eubanks and Bishop, who were initially taken into custody along with the defendant, were granted immunity from prosecution.

At trial, Eubanks and Bishop testified that defendant hired the Sarkissians to burn her home in order to collect the insurance proceeds. For their role, the Sarkissians were to receive 10 percent of the total proceeds, and on December 14 defendant made a partial payment of $500.

Eubanks also testified that earlier in 1976 she had driven Mrs. Sarkissian, who did not have a car, to a sporting goods store to purchase gun powder, and in July had driven her to Zody's, where Mrs. Sarkissian bought five, five-gallon containers, which were later filled with kerosene. Eubanks stated that at the time of these purchases she did not know what the items were to be used for, and that when later told by Mrs. Sarkissian they were to "burn down Ofelia's house" she did not believe her.

Bishop, who lived with the Sarkissians for two to three months commencing in August or September 1976, testified that she knew about the arson scheme, and that in the fall of that year she had accompanied the Sarkissians to defendant's home, where she helped Pascal Sarkissian unload approximately forty containers of fuel from his car, carry them down to defendant's basement, and, at defendant's direction, stack them behind a basement wall. Bishop was aware Sarkissian was going to commit a crime and was prepared to help him get away with it.

At the conclusion of the case, counsel for defendant requested that the jury be instructed as a matter of law that Shawn Bishop and Judy Eubanks were accomplices. The request, granted as to Bishop but refused as to Eubanks, was then withdrawn by defense counsel.

DISCUSSION

Defendant's primary contention is that the trial court erred in failing to rule that Judy Eubanks was an accomplice as a matter of law. Since Shawn Bishop was also an accomplice, and since a conviction cannot be based upon the corroborated testimony of an accomplice (Pen. Code, § 1111), the trial court also erred in failing to grant defendant's motion for acquittal for insufficiency of the evidence (Pen. Code, § 1118.1). We find no error.

An accomplice is "one who is liable to the prosecution for the identical offense charged against the defendant on trial in the cause in which the testimony of the accomplice is given." (Pen. Code, § 1111.) To fall within this definition one must be liable as a principal (People v. Tewksbury (1976) 15 Cal.3d 953, 960), and to be liable as a principal one must share not only the commission of the crime (Pen. Code, § 31), but the criminal intent as well (Pen. Code, 20).

At bench, Eubanks testified that when the gun powder and kerosene were purchased she did not know what they were to be used for and that when later told they were to be used to set a fire she did not believe it. Since Eubanks' testimony raised a factual dispute as to whether she was an accomplice, the trial court acted correctly in refusing to instruct as a matter of law that she was an accomplice.

The question of Eubanks' status as an accomplice having been properly left to the jury, we presume on appeal that the jury found she was not an accomplice. (People v. Santo (1954) 43 Cal.2d 319, 326-27.) Her testimony, therefore, did not require corroboration, the evidence was sufficient to sustain the conviction, and the motion for acquittal was properly denied.

The judgment is affirmed.

NOT FOR PUBLICATION.

_____, ACTING P.J.
FLEMING

We concur:

_____, J.
COMPTON

_____, J.

Clerk's Office, Supreme Court
4250 State Building
San Francisco, California 94102

I have this day filed Order

FEB 1 1979

HEARING DENIED

In re: 2 Crim. No. 32530

People

vs.

Chirolde

Respectfully,

G. E. BISHEL,
Clerk